

1 Matthew R. Schultz (220641)
Timothy D. Battin
2 Thomas Palumbo
STRAUS & BOIES, LLP
3 4041 University Drive
5th Floor
4 Fairfax, VA 22030
Telephone: (703) 764-8700
5 Facsimile: (703) 764-8704

6
7 *Counsel for Plaintiff*

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 TRAVIS WIEBE, on behalf of himself and
all others similarly situated,
12 *Plaintiff,*

13
14 v.

15 NETFLIX, INC, WAL-MART STORES,
INC., and WALMART.COM USA LLC,
16 *Defendants.*

Case No. 3:09-CV-01274-JCS

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER TO RELATE CASE**

17
18 PLEASE TAKE NOTICE that, pursuant to Local Rule 3-12, Plaintiff Travis Wiebe submits this
19 Administrative Motion for the Court to consider whether *Wiebe, et al. v. Netflix, Inc., et al.*
20 (“Wiebe”) filed on March 24, 2009, should be related to *Resnick, et al. v. Walmart.com USA LLC,*
21 *et al.*, Case No. 09-cv-0002 filed on January 2, 2009, also pending in this District. That action
22 has been assigned to the Honorable Phyllis J. Hamilton.

23 In addition to the *Resnick* action, other related actions pending in this District are:

- 24 • *O’Conner v. Walmart.com USA LLC et al.*, Case No. 09-cv-0-0096, filed January 9,
25 2009;
26 • *Endzweig v. Walmart.com USA LLC et al.*, Case No. 09-cv-00111, filed January 9,
27 2009;
28 • *Schmitz v. Walmart.com USA LLC, et al.*, Case No. 09-cv-00116, filed January 9,
2009;

- 1 • *Lynch, et al. v. Walmart.com USA LLC, et al.*, Case No. 09-cv-00138, filed January 12,
2 2009;
- 3 • *Groce, et al., Walmart.com USA LLC, et al.*, Case No. 09-cv-00139, filed January 12,
4 2009;
- 5 • *Sivek v. Walmart.com USA LLC, et al.* Case No., 09-cv-00156, filed January 13, 2009;
- 6 • *Faris v. Netflix, Inc., et al.*, Case No. 09-cv-00180, filed January 14, 2009;
- 7 • *Slobodin v. Netflix, Inc., et al.*, Case No. 09-cv-00225, filed January 16, 2009;
- 8 • *Anthony, et al., v. Walmart.com USA LLC, et al.*, Case No. 09-cv-00236, filed January
9 20, 2009;
- 10 • *Polk-Stamps v. Netflix, Inc., et al.*, Case No. 09-cv-00244, filed January 20, 2009;
- 11 • *Sheeler v. Walmart.com USA LLC, et al.*, Case No. 09-cv-00274, filed January 22,
12 2009;
- 13 • *Chapman v. Netflix, Inc., et al.*, Case No. 09-cv-00294, filed January 22, 2009;
- 14 • *Orozco v. Netflix, Inc., et al.*, Case No. 09-cv-00297, filed January 22, 2009;
- 15 • *Landels, et al., v. Netflix, Inc., et al.*, Case No. 09-cv-00340, filed January 26, 2009;
- 16 • *Grime v. Netflix, Inc., et al.*, Case No. 09-cv-00349, filed January 26, 2009;
- 17 • *Meyer v. Walmart.com USA LLC, et al.*, Case No. 09-cv-00361, filed January 26, 2009;
- 18 • *Randall v. Walmart.com USA LLC, et al.*, Case No. 09-cv-00368, filed January 27,
19 2009;
- 20 • *Miscioscia v. Netflix, Inc., et al.*, Case No. 09-cv-00377, filed January 27, 2009;
- 21 • *Hirsch v. Netflix, Inc., et al.*, Case No. 09-cv-00375, filed January 27, 2009;
- 22 • *Patras, et al. v. Netflix, Inc., et al.*, Case No. 09-cv-00378, filed January 27, 2009;
- 23 • *Chatelain v. Netflix, Inc., et al.*, Case No. 09-cv-00391, filed January 28, 2009;
- 24 • *Weiner v. Walmart.com USA LLC, et al.*, Case No. 09-cv-00398, filed January 28,
25 2009;
- 26 • *Millrood v. Walmart.com USA LLC, et al.*, Case No. 09-cv-00399, filed January 28,
27 2009;
- 28 • *Kober v. Walmart.com USA LLC, et al.*, Case No. 09-cv-00400, filed January 28, 2009;

- 1 • *LaCabe v. Walmart.com USA LLC, et al.*, Case No. 09-cv-00402, filed January 28,
2 2009;
- 3 • *Norem v. Netflix, Inc.*, Case No. CV-09-00956-MJ (Cal. Super. Ct., County of Santa
4 Clara), filed January 28, 2009;
- 5 • *Roy v. Netflix, Inc., et al.*, Case No. 09-cv-00434, filed January 29, 2009;
- 6 • *Bruno, et al. v. Walmart.com USA LLC, et al.*, Case No. 09-cv-00445, filed January 30,
7 2009;
- 8 • *Zaker v. Netflix, Inc., et al.*, Case No. 09-cv-00447, filed January 30, 2009;
- 9 • *Parikh v. Netflix, Inc., et al.*, Case No. 09-cv-00496, filed February 3, 2009;
- 10 • *Johnson v. Walmart.com USA LLC, et al.*, Case No. 09-cv-00553, filed February 6,
11 2009;
- 12 • *Gannon v. Walmart.com USA LLC, et al.*, Case No. 09-cv-00554, filed February 6,
13 2009;
- 14 • *Williams v. Netflix, Inc., et al.*, Case No. 09-cv-00678, filed February 17, 2009;
- 15 • *Cornett v. Netflix, Inc., et al.*, Case No. 09-cv-01605, filed March 5, 2009;
- 16 • *Macias v. Netflix, Inc., et al.*, Case No. 09-cv-00961, filed March 5, 2009;
- 17 • *Randle v. Netflix, Inc., et al.*, Case No. 09-cv-00962, filed March 5, 2009 and,
18
- 19 • *Haddad v. Netflix, Inc., et al.*, Case No. 09-00958, filed March 5, 2009.

20 The *O'Connor, Endzweig, Schmitz, Lynch, and Groce* actions were ordered related to the
21 *Resnick* action on January 16, 2009. The *Sivek, Faris, and Anthony* actions were ordered related
22 to the *Resnick* action on January 26, 2009. The *Slobodin, Polk-Stamps, Chapman, and Orozco*
23 actions were ordered related to the *Resnick* action on January 29, 2009. The *Sheeler, Landels,*
24 *Grime, Meyer, Randall, Miscioscia, Hirsch* and *Chatelain* actions were ordered related to the
25 *Resnick* action on February 2, 2009. The *Patras, Weiner, Millrood, Kober, LaCabe, Roy, Bruno,*
26 *Zaker, Parikh, Johnson* and *Gannon* actions were ordered related to the *Resnick* action on
27 February 9, 2009. The *Williams* action was related to the *Resnick* action on February 25, 2009.
28 The *Cornett, Macias, and Randle* actions were ordered related to the *Resnick* action on March 17,

1 2009. The *Norem* and *Haddad* actions were ordered related to the *Resnick* action on March 26,
2 2009. All of these related cases have been assigned to Honorable Phyllis J. Hamilton.

3 All of these actions involve substantially the same transactions, events, questions of law,
4 and allege the same violations of federal antitrust law against the same Defendants. These actions
5 allege that Defendants conspired to allocate the market of DVD rentals, agreed not to compete in
6 that market, and that Netflix monopolized or attempted to monopolize the DVD rental market.
7 These actions are alleged to have harmed consumers who were Netflix subscribers by causing
8 them to pay more for their subscriptions than they would have paid absent Defendants' illegal
9 market allocation agreement. It appears likely that there will be an unduly burdensome
10 duplication of labor and expenses and potentially conflicting results if the cases are heard by
11 different judges.

12 Given the similarities of these actions, assignment of the *Wiebe* case to a single Federal
13 District Court Judge will conserve judicial resources and promote efficient determination of the
14 actions while avoiding potentially conflicting results. All of the related cases pending in this
15 District are at a preliminary stage and, thus, assignment to a single judge would not prejudice any
16 of the parties. Because Judge Hamilton is familiar with the facts, the parties, and the claims, it
17 would be an unduly burdensome duplication of labor and expense if the cases are conducted
18 before different judges.

19 Accordingly, plaintiff Travis Wiebe respectfully requests *Wiebe, et al. v. Netflix, Inc., et al.*
20 be deemed related to *Resnick, et al. v. Walmart.com USA LLC, et al.*, the first filed case in this
21 District and presently assigned to the Honorable Phyllis J. Hamilton.

22
23 Dated: March 31, 2009

24
25 Respectfully submitted,

26 By: _____/s/

27 Matthew R. Schultz (220641)

28 Timothy D. Battin
Thomas Palumbo

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STRAUS & BOIES, LLP
4041 University Drive
5th Floor
Fairfax, VA 22030
Telephone: (703) 764-8700
Facsimile: (703) 764-8704

Counsel for Plaintiff